

ROUTING AND RECORD SHEET**SUBJECT:** (Optional)

Letter to Judge Clark re NSDD 84

FROM:

Director, ICS

EXTENSION**NO.**

ICS-83-0812

DATE**TO:** (Officer designation, room number, and building)**DATE****RECEIVED****FORWARDED****OFFICER'S INITIALS****COMMENTS** (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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ICS-83-0812

15 JUL 1983

MEMORANDUM FOR: Director of Central Intelligence
VIA: Deputy Director of Central Intelligence
FROM:
Director, Intelligence Community Staff
SUBJECT: Letter to Judge Clark re NSDD 84

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1. Action Requested: That you sign the attached letter to Judge Clark, expressing concern that the DCI's authority for SCI security policy is being eroded through efforts of the NSDD 84 working group on standardized nondisclosure agreement forms, and proposing that the DCI continue to be the authority for SCI nondisclosure forms and procedures.

2. Background: After a discussion of NSDD 84 implementation at the 5 July 1983 IC Staff meeting, the DDCI directed that steps be taken to safeguard the position of the DCI regarding security policy for SCI.

3. The implementation of NSDD 84 raises concerns about the role of the Director of Central Intelligence in setting standards for the protection of intelligence data, sources and methods.

4. Although the DCI Security Committee enthusiastically supported adoption of the Willard Report, the manner in which the document was to be implemented could not have been foreseen. The final draft of NSDD 84 did not contain two provisions which were in the published version. These were the requirement to include a prepublication review clause for collateral material in the SCI nondisclosure agreement and the assignment to the Information Security Oversight Office (ISOO) of the responsibility for formulating standardized nondisclosure agreement forms.

5. For many years, the DCI or specific SCI program managers prescribed the secrecy agreements covering access to SCI. In 1981, the DCI promulgated a nondisclosure agreement, Form 4193, deemed by the Justice Department to be "legally sufficient" and including an explicit prepublication review clause. It has since been in use throughout the Intelligence Community and has been signed by thousands of SCI-approved individuals. The National Security Agency found it necessary to combine the SCI agreement with an Agency secrecy agreement, but incorporated the essentials of Form 4193 into its form.

6. Immediately after issuance of NSDD 84, the Chairman, SECOM, advised the Director of ISOO that the DCI considered Form 4193 the appropriate form for SCI agreements. Mr. Garfinkel advised that he saw no reason why Form 4193 should not be the "standardized form" for SCI.

7. The inclusion of a prepublication review requirement for collateral material in the SCI nondisclosure agreement is the wedge that has permitted the proposed insertion of, inter alia, a specific provision, "However, I am not required to submit for review any such materials that exclusively contain information lawfully obtained by me, and to be published, at a time when I have no employment, contract or other relationship with the United States Government." The purpose of the clause ostensibly is to avoid problems for journalists who are appointed to Federal positions and then return to their former trade.

8. The leadership of the ad hoc group for secrecy agreements indicate that a compromise has been reached with State Department representatives to ease the prepublication review clause. They also express concern that too strong an agreement will bring an avalanche of manuscripts for review that will be impossible to handle.

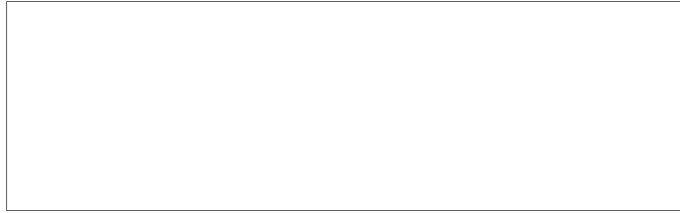
9. They point out that any agency wishing to use a more stringent agreement may apply to the Director, ISOO, for a waiver. The implication of this is that the DCI, who heretofore has made the rules for SCI for the Intelligence Community and the U.S. Government, will not do so in this particular area. In fact, if he wishes to impose more stringent rules on his own agency, he will first have to get permission of the Director, ISOO. This seems to transfer from the DCI to the ISOO a substantial portion of his statutory responsibility for the protection of intelligence sources and methods.

10. On balance, the draft SCI nondisclosure agreement at this stage appears to be weaker than Form 4193, but not unacceptably so. The principal problems are the perception of the DCI's role in protecting sources and methods and the reduction of that role by the manner in which NSDD 84 is implemented.

11. The attached proposed letter to the Assistant to the President for National Security Affairs is intended to explain DCI opposition to relinquishing any authority for SCI security to the Director, ISOO, or to the NSDD working group on standardized forms. It expresses your intention to retain the authority for the SCI nondisclosure agreement and the current mechanism for revising it.

12. Recommendation: That you sign the attached letter.

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Attachment

ICS-83-0812

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Distribution:

Orig - Addressee w/att
1 - DDCI w/att
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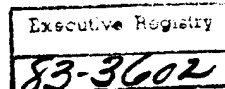
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C/SECOM: [redacted] (7/12/83)

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The Director of Central Intelligence

Washington, D. C. 20505



28 JUL 1983

The Honorable William P. Clark
Assistant to the President for
National Security Affairs
The White House
Washington, D. C. 20500

Dear Judge Clark:

Actions being taken to implement National Security Decision Directive No. 84 (NSDD 84) have taken a turn which I did not anticipate when the Intelligence Community urged the President to adopt the Willard Report. Current plans to implement specific provisions of the NSDD will, I believe, significantly conflict with the responsibilities of the Director of Central Intelligence (DCI) under law.

At the time NSDD 84 was promulgated, the DCI was the unquestioned arbiter of security standards and criteria relating to intelligence sources and methods. An SCI nondisclosure agreement (Form 4193), issued in 1981 via the SECOM mechanism, was accepted throughout the Intelligence Community and was signed by thousands of persons. While the agreement was tailored to consider the concerns of Intelligence Community members, the basis for requiring such an agreement as a condition precedent to SCI access clearly flowed from the DCI's statutory responsibility. The major impetus for Form 4193 was the Supreme Court's having upheld in the Snepp case a similar nondisclosure agreement relating to CIA employment. I am now concerned, however, that the NSDD implementation process may undermine the responsibility of the DCI to protect SCI and other information relating to intelligence sources and methods because the DCI would no longer retain the necessary control of security standards and criteria.

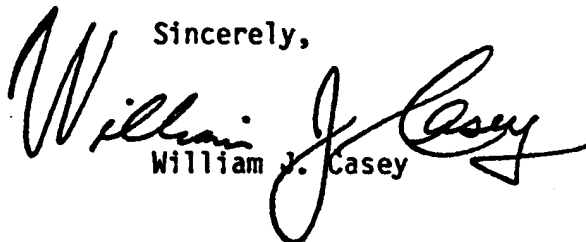
The U. S. Government generally, and the Intelligence Community in particular, have long recognized the special responsibility of the DCI, set forth in the National Security Act of 1947, to protect intelligence sources and methods from unauthorized disclosure. This responsibility has been given effect by the establishment of Sensitive Compartmented Information (SCI) as a special category of intelligence data. Through Executive Orders 12333 and 12356 and a series of DCI Directives, DCI policy for SCI has been implemented throughout the U. S. Government. The DCI Security Committee (SECOM) was chartered to assist in carrying out these responsibilities. It did not occur to me, nor do I believe it was the President's intent, that the NSDD would in any way weaken or undermine the role of the DCI in such matters.

What has happened, however, is that a working group, chaired by the General Services Administration's Information Security Oversight Office, has revised the existing SCI nondisclosure agreement which I had promulgated. In addition, I understand the working group intends to make any agency's use of a more stringent agreement subject to ISOO approval. In effect, this transfers the authority for this important aspect of SCI security from the DCI to the Director of ISOO. It should be noted that the final draft of the NSDD circulated for review did not create such a role for ISOO and I must say I was surprised to find such language published in the NSDD.

I believe the implementation of the NSDD would be best accomplished by the following steps: ISOO should develop standardized language relating only to the prepublication review of collateral information. This language should reflect any agreements reached by the working group concerning collateral prepublication review. Once this language has been developed, it should be presented to the SECOM for incorporation into a revised Form 4193, along with any other suggestions that the working group believes might strengthen the revised form. After due consideration, a revised Form 4193 will be promulgated by the SECOM, at my direction, including the collateral prepublication language developed by ISOO, as well as any other language adopted by the SECOM to strengthen the revised form, consistent with the NSDD. This will avoid any appearance of conflict between ISOO and the DCI's established authority to make the rules for the protection of intelligence sources and methods.

I regret the necessity to bring this to your attention, but any reduction of the DCI's security role would erode the DCI's ability to carry out his statutory obligation to protect sources and methods and would be contrary to the national interest. I hope this matter can be resolved quickly. In the interim, I shall plan to continue Intelligence Community use of the present nondisclosure agreement for SCI access.

Sincerely,


William J. Casey

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